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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 50 and 58**

**[Docket No. FR-5616-F-02]**  
**RIN 2506-AC34**

**Environmental Compliance Recordkeeping Requirements**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. HUD's current regulations require that HUD staff document environmental review compliance using form HUD-4128. Recipients receiving HUD assistance and other entities responsible for conducting environmental reviews (responsible entities) are currently allowed to either use HUD-recommended formats or develop equivalent formats for documenting environmental review compliance.

The reference to a specific form number in part 50 restricts HUD's ability to adopt alternative form designations and forms, while authorizing the use of alternate forms makes it difficult for HUD to assess, compare, and collect data on responsible entities' environmental review records. Despite being applicable to different parties, environmental review responsibilities under parts 50 and 58 are substantively similar. In light of that, the final rule gives the Departmental Environmental Clearance Officer (DECO) the authority to create one standardized format for use in reviews and authorize exceptions, thereby eliminating unnecessary distinctions between reviews completed by HUD employees and responsible entities.

This final rule also makes a technical amendment by making the steps required to prepare an environmental assessment in HUD's regulations consistent with the "Environmental Assessment" definition provided in the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA)

**DATES:** Effective Date: **[Insert date 30 days from the date of publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7250, Washington, DC 20410; telephone number 202-402-4442 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On February 27, 2014, at 79 FR 11045, HUD published for public comment a proposed rule that would address the formats used for preparing and documenting the required environmental reviews under both 24 CFR parts 50 and 58. Additionally, the rule proposed to make a technical amendment to part 58 to align it with CEQ regulations implementing NEPA's environmental assessment requirements.

NEPA and related authorities<sup>1</sup> require review of the potential environmental impacts of, and the preparation of environmental reviews for, Federal policy and program actions. HUD's regulations at 24 CFR part 50 and part 58 implement these environmental requirements. HUD's

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<sup>1</sup> See 24 CFR 50.4 and 24 CFR 58.5-6 for a listing of these Federal laws and authorities.

regulations at 24 CFR part 50, entitled “Protection and Enhancement of Environmental Quality,” govern the environmental reviews performed by HUD for its policies and programs. The regulations at 24 CFR part 58, entitled “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” prescribe the requirements governing environmental reviews performed by recipients of HUD assistance and other responsible entities that assume HUD’s environmental responsibilities in applicable HUD programs. Both 24 CFR part 50 and part 58 address the formats used for preparing and documenting the required environmental reviews.

The reference to a single form number in part 50 at § 50.20(a) and § 50.31(a) restricts HUD’s ability to issue a new form with a different designation or other forms. The part 58 regulations at § 58.38 and § 58.40 allow entities assuming HUD environmental review responsibilities to develop an equivalent format for preparing and documenting an environmental review, which results in entities using a variety of formats. This sometimes makes it difficult for HUD and interested members of the public to assess compliance and prevents HUD from collecting reliable data. To resolve both concerns, HUD issued the February 27, 2014, proposed rule to remove the reference to a single form in part 50 and give the Departmental Environmental Clearance Officer (DECO) the authority to create one standardized format for use in both part 50 and part 58 reviews and authorize exceptions. In addition to resolving the above concerns, HUD proposed to make a technical amendment to part 58.

## **II. This Final Rule**

This final rule follows publication of the February 27, 2014, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on April 28, 2014. HUD received public comments from three

commenters. Section III of this preamble discusses the comments received on the final rule. HUD has decided to adopt the final rule as final with no substantive changes.

This final rule amends 24 CFR part 50 by removing the reference to the form HUD-4128. The revised regulation will require that HUD staff use a format approved by the DECO to prepare and document the required environmental reviews. The rule will give the DECO the authority to establish alternative formats as necessary to meet specific program needs. However, this rule does not change or replace HUD-4128.

This rule will also amend 24 CFR part 58 by requiring entities assuming HUD's environmental review responsibilities to use a format prescribed by the DECO. As with environmental reviews conducted under part 50, the DECO will have the authority to establish alternative formats as necessary to meet specific program needs. However, again, this rule does not prescribe the format to be used.

Finally, this rule makes a technical amendment to § 58.40 by incorporating the CEQ's language implementing NEPA's environmental assessment requirements into HUD's regulations.

### **III. Discussion of Public Comments**

The following section presents a summary of the public comments in response to the February 27, 2014, proposed rule, and HUD's responses.

Comment: Opposition to the HEROS system. Commenters wrote in opposition to HUD's new web-based system HEROS.

HUD Response: The public was given a separate opportunity to comment on HUD's new HUD Environmental Review Online System (HEROS) through Paperwork Reduction Act (PRA) notices published in the Federal Register on December 27, 2013 and March 31, 2014.

The public was also notified of the new system for use in both part 50 and part 58 environmental reviews in HUD's announcement of the Office of Management and Budget (OMB) Approval Number on July 24, 2014 (79 FR 43059).

Comment: General Concerns and possible alternatives to the proposed rule. Commenters wrote that HUD's data collection objectives could be easily accomplished by having the states provide the desired data to HUD by other means. Two commenters wrote that HUD should provide further clarification regarding what HUD wants the agencies to assess.

One commenter wrote that changing an entire process that works for states when HUD could clarify the information it requires is overly burdensome. Additionally, the commenter expressed concern that receiving all the data from sub-recipients rather than having states normalize it or provide explanation could become burdensome for HUD.

Commenters also wrote that states want to be considered partners with HUD. One commenter specifically wrote that while it understands that the information being collected from the field helps HUD make decisions regarding future environmental regulatory changes that would streamline the process for everyone involved, HUD must also consider the burden placed on states.

HUD Response: HUD anticipates that instituting standardized formats will allow the Department to collect consistent data on environmental reviews for the first time. In addition, using a single format for collecting information will increase transparency and overall compliance in HUD's environmental reviews. Nevertheless, the proposed rule allows for flexibility as appropriate for the DECO to prescribe alternative formats.

HUD considered and will continue to consider the burden on sub-recipients, states and HUD when implementing any new formats for environmental reviews.

HUD values the commenters' statement that states want to be considered partners with HUD. This partnership is important to HUD and the Department will continue to work closely with states on data collection and analysis.

Comment: The proposed rule limits flexibility for states. Two commenters opposed the rule and wrote that states should continue to have the option of using an equivalent format. The commenters wrote that states should have the flexibility and freedom of choice regarding the means of providing data to HUD. One of the commenters wrote that at a minimum the State Community Development Block Grant (CDBG) program should be exempt from the new requirements. Another commenter requested that state-administered HUD programs, in particular, the CDBG Small Cities Program, be exempted from the new requirements.

Commenters also wrote that under the State CDBG program regulations, 24 CFR 570.480(c), states are to have the maximum feasible deference in the interpretation of the requirements and in the administrations of the CDBG program, and requiring a single format infringes on the states' ability to operate with maximum feasible deference.

One commenter also wrote that the rule violates Executive Orders 12866 and 13563 which require federal agencies to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice.

HUD Response: The purpose of the rule is to eliminate the need for agencies to develop individual formats and to mitigate the redundancies, inaccuracies, and confusion that arise when many forms are used for the same purpose. Having previously allowed multiple formats under part 58, HUD believes that standardized formats are necessary to ensure compliance with all applicable environmental laws and authorities. HUD intends for the new requirements to ease

the environmental compliance burden on all HUD recipients by applying a uniform and consistent approach.

Nevertheless, the rule allows for flexibility as appropriate. Under the rule, the DECO may prescribe alternative formats to meet specific program needs where the forms established by HUD cannot achieve the aforementioned goals. This option may be exercised if the DECO determines that the forms established by HUD are not suitable for a program's needs.

Comment: The proposed rule does not address what format HUD will adopt and how it will increase access for the public to the environmental review records ("ERR"). Two commenters wrote that HUD has not described how the proposed rule will increase citizens' access to the ERRs. Additionally, these commenters wrote that a web copy of the record might not provide additional access to the public for small communities. Furthermore, requiring both a paper copy and a web copy would result in additional work for these communities.

HUD Response: This final rule does not address format. The public had an opportunity to comment on HUD's new HUD Environmental Review Online System (HEROS) through Paperwork Reduction Act (PRA) notices published in the Federal Register on December 27, 2013 and March 31, 2014, and was notified of the new system for use in both Part 50 and Part 58 environmental reviews in HUD's announcement of the OMB Approval Number on July 24, 2014 (79 FR 43059). Nevertheless, HUD considers transparency in all PRA processes and will continue to seek ways to increase access for the public to the ERRs.

Comment: Request for a regulatory flexibility analysis. One commenter recommended that HUD conduct a regulatory flexibility analysis because the proposed rule would cause a significant economic impact on a substantial number of small entities.

HUD Response: HUD intends for the new requirements to ease the environmental compliance burden on all HUD recipients by eliminating the need for agencies to develop individual formats. HUD will continue to monitor the impact on small entities and exercise the flexibility provided in the rule if appropriate.

#### **IV. Findings and Certifications**

##### Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made on whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, the final rule revises the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. The purpose of the rule is to eliminate the need for entities to develop individual formats and to mitigate the redundancies, inaccuracies, and confusion that arise when many forms are used for the same purpose. The use of multiple formats under part 58 was ineffective, insufficient, and for some entities, excessively burdensome. As a result of HUD’s previous experience, HUD believes that standardized formats are necessary to ensure compliance with all

applicable environmental laws and authorities. HUD intends for the new requirements to ease the environmental compliance burden on all HUD recipients, streamlining the compliance process by applying a uniform and consistent approach.

Consistent with the goals of Executive Order 13563, the final amendments simplify and standardize the format requirements. Changes to the format will now be made through the PRA notice-and-comment process, the more appropriate forum for such changes. In addition, the final rule makes a technical amendment to include in HUD's regulations the procedures a responsible entity must complete when preparing an environmental assessment already required under the Council on Environmental Quality (CEQ) regulations. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

#### Paperwork Reduction Act

The information collection requirements for part 50 and part 58 contained in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) and assigned OMB control number 2506-0202. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The final rule would not have a significant economic impact on a substantial number of small entities. The final rule does not add any new substantive regulatory obligations on participants in HUD programs. The current regulations already require that entities maintain ERRs in accordance with HUD-recommended formats or equivalent formats, and HUD is merely standardizing the recording format. HUD intends for the new requirements to ease the environmental compliance burden on all HUD recipients by eliminating the need for agencies to develop individual formats. Nevertheless, the proposed rule allows for flexibility as appropriate as the DECO may prescribe alternative formats to meet specific program needs where the forms established by HUD cannot achieve the aforementioned goals.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute or if the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under

24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the NEPA.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This final rule does not impose any Federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

#### **List of Subjects**

##### 24 CFR Part 50

Environmental quality, Environmental protection, Environmental review policy and procedures, Environmental assessment, Environmental impact statement, Compliance record.

##### 24 CFR Part 58

Environmental protection, Community Development Block Grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 50 and 58, to read as follows:

#### **PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

1. The authority citation for part 50 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4321-4335; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. In § 50.18, designate the undesignated paragraph as paragraph (b) and add new paragraph (a) to read as follow:

**§ 50.18 General.**

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format to be used to document compliance with NEPA and the Federal laws and authorities cited in § 50.4. The DECO may prescribe alternative formats as necessary to meet specific program needs.

\* \* \* \* \*

3. In § 50.20, revise the introductory text of paragraph (a) to read as follows:

**§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.**

(a) The following actions, activities, and programs are categorically excluded from the NEPA requirements for further review in an Environmental Assessment or an Environmental Impact Statement as set forth in this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders, and HUD standards cited in §50.4, where appropriate. Where the responsible official determines that any proposed action identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements for further review under NEPA shall apply (see paragraph (b) of this section).

\* \* \* \* \*

4. Revise § 50.31(a) to read as follows:

**§ 50.31 The EA.**

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format used for the environmental analysis and documentation of projects and activities under subpart E. The DECO may prescribe alternative formats as necessary to meet specific program needs.

\* \* \* \* \*

**PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING  
HUD ENVIRONMENTAL RESPONSIBILITIES**

5. The authority citation for part 58 is revised to read as follows:

12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

6. In § 58.38, revise the introductory text to read as follows:

**§ 58.38 Environmental review record.**

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

\* \* \* \* \*

7. In § 58.40, revise the introductory text and paragraph (e) to read as follows:

**§ 58.40 Preparing the environmental assessment.**

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

\* \* \*

(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

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Dated: August 5, 2014

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Clifford Taffet  
Assistant Secretary for Community Planning  
and Development (Acting)

**[FR-5616-F-02]**

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